

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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| IN RE: VALSARTAN, LOSARTAN, AND IRBESARTAN PRODUCTS LIABILITY LITIGATION | CIVIL ACTION NUMBER: 1:19-md-02875-RBK-KW STATUS CONFERENCE (Via telephone) |
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Thursday, June 10, 2021
Commencing at 11:00 a.m.

B E F O R E: SPECIAL MASTER,
THE HONORABLE THOMAS I. VANASKIE

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transcript produced by computer-aided transcription.

1 (ALL PARTIES VIA TELECONFERENCE, June 10, 2021,
2 11:00 a.m.)

3 THE COURT: We have a very narrow issue this morning,
4 and I wanted to get it resolved. That's why I scheduled this
5 on fairly short notice.

6 Who will be addressing this matter for the
7 plaintiffs?

8 That is, as I understand it, the issue to be resolved
9 is the timing for production of documents in response to the
10 approved production request.

11 So, I guess, who will be addressing this issue for
12 plaintiffs?

13 MR STANOCH: Good morning, Your Honor. This is David
14 Stanoch. I will be addressing the issue for plaintiffs. And
15 you are correct from our perspective of the narrow issue for
16 today.

17 THE COURT: All right.

18 MS. RICHER: And good morning, Your Honor. This is
19 Kristen -- I'm sorry, Your Honor. This is Kristen Richer from
20 Barnes & Thornburg on behalf of the pharmacy defendants.

21 THE COURT: Okay. So you'll be addressing this for
22 the pharmacy defendants.

23 Do we have somebody on for the wholesaler defendants?

24 MR. GEOPPINGER: Yes, Your Honor. Jeff Geoppinger on
25 behalf of the wholesaler defendants.

1 THE COURT: All right. And, Ms. Richer,
2 Mr. Geoppinger, do you agree I've accurately summarized the
3 issues to be resolved today?

4 MR. GEOPPINGER: Yes, Your Honor.

5 MS. RICHER: Yes, Your Honor. We've reached out to
6 discuss the issue of the timing of our productions.

7 THE COURT: Okay. So as I understand it, the
8 plaintiffs are seeking to have production complete within 30
9 days of the entry of these requests, and both the wholesaler
10 and the retailer defendants are looking for 90 days; rolling
11 production starting in 30 days to be substantially completed
12 in 90 days.

13 Ms. Richer, is that correct?

14 MS. RICHER: Yes, Your Honor. Although, if I may,
15 you know, I wanted to say, you know, we appreciate the Court's
16 time and assistance on the question of this issue, and we
17 regret that we had to ask Your Honor to intervene.

18 You know, we had briefed the issue of the timing of
19 productions at the last case management conference, and the
20 hope was there that plaintiffs would either agree or, if they
21 did not, we could discuss it with the Court at the last
22 conference and come out of that conference with a decision.

23 You know, to give you some background on this,
24 Mr. Stanoch sent the draft order earlier this week. And when
25 the pharmacy defendants added it to include our initial

1 proposal on timing, which was the 90 days with rolling
2 production to start at 30 days out, we got an e-mail asking if
3 that was really our position and directing us to reconsider.

4 In response to that, we explained that it was, and
5 that it had been our position. And we emailed a couple of
6 times to offer to meet and confer on it immediately. I
7 offered to have anyone call my cell so that we could discuss,
8 and plaintiffs appeared to be uninterested in meeting and
9 conferring on it and then had mailed the Court instead. So
10 that's how we got here.

11 You're right that the plaintiffs' concern appears to
12 be one of timing, that 90 days puts us too close to the
13 current close of Phase 2 discovery on October 1st.

14 I'll say that we're not insensitive to that concern.
15 That's why we offered to do the rolling productions; you know,
16 that that structure is also consistent with what was done the
17 last round.

18 And we do think that there are some things here that
19 can be produced relatively quickly. For example, we have
20 previously produced supply agreements, which we've agreed to
21 produce in the last redacted form, and it may be that current
22 versions of certain inventory management policy are relatively
23 straightforward to obtain.

24 There are other items that we anticipate that will be
25 more difficult to produce here. You know, to just sort of run

1 through them, older or other versions of supplier services
2 agreements that were not previously produced, the way that we
3 came to produce supply agreements previously was because we
4 were required to produce indemnity provisions that we were
5 relying on, and several pharmacies, you know, also produced
6 certain reqs and warranties.

7 I think the current request, as drafted, is a little
8 bit broader and more fulsome, and so there are pharmacies that
9 have to go search and see if there are other agreements that
10 need to be produced here.

11 Historic versions of inventory management policies,
12 which I'll tell the Court that we found quite difficult to
13 produce in the last round. It's not always easy to track down
14 older versions of policies.

15 And then there's a request regarding org charts or
16 identification of persons responsible for certain key pharmacy
17 business functions, and some of that we anticipate taking some
18 time to track down those individuals.

19 So, you know, that was what drove the initial
20 proposal.

21 We still do have some concerns regarding the timing,
22 and we certainly have a concern with plaintiffs' proposal
23 regarding 30 days.

24 You know, however, in light of plaintiffs' position,
25 we've conferred with the wholesalers, and I think our group

1 and the wholesalers are willing to try to get this all done in
2 60 days instead, this rolling production 30 days and 60 days
3 out.

4 You know, candidly, I wish we could have discussed
5 this with plaintiffs, but that's not where we are right now.
6 And we did want to try to propose a compromise here to move
7 things along and to hopefully not burden the Court too much
8 with this issue.

9 THE COURT: Well, thank you for that. I appreciate
10 that.

11 Mr. Geoppinger, did you want to be heard on this
12 before I rule on Mr. Stanoch's position?

13 MR. GEOPPINGER: Yes, Your Honor.

14 With respect to the wholesalers, I mean, our --
15 obviously, as Ms. Richer mentioned, that we're agreeable to,
16 you know, compromising and doing a 60-day thing.

17 And one of the requests to us involves the supply
18 agreements as -- and you'll note in the request there's, you
19 know, some language about not having to reproduce documents
20 that have already been produced, and that means those kinds of
21 agreements that are going to be produced by the retail
22 pharmacy defendants, if they haven't already been produced,
23 and those that have -- and as far as I understand, they have
24 already been produced from the manufacturer defendants.

25 So what I'm just trying to say is there's sort of

1 a -- what we have to do and the extent we have to do it is
2 kind of triggered by what's going on above and below us. So
3 that's another way of saying, we just -- we're sort of in step
4 here with the pharmacies. When they can get it done, that's
5 going to inform us as to what we need to get done in terms of
6 those agreements.

7 So, you know, we'd ask the same amount of time.

8 THE COURT: Okay. Mr. Stanoch?

9 MR. STANOCH: Thank you, Your Honor. I'll be brief.

10 We believe that the response time for the production
11 should still be 30 days. We appreciate the 60, but we still
12 believe it should be 30 for a few reasons.

13 Number 1. As Your Honor knows, the presumptive time
14 for response is, under the rules, is 30 days, which we believe
15 should apply here. That's, in fact, the same time period
16 Magistrate Judge Schneider's original order of July 10, 2020,
17 set for the first sets of approved requests to these
18 defendants.

19 Further, the sets of requests approved by the
20 defendants themselves here do not make reference to any 90-day
21 response deadline. We never heard about a 90-day request
22 until the retailers submitted their CMC letters. In fact, the
23 responses agreed to by the parties merely state they'll be
24 responded to consistent with Rule 34 and Local Rule 34.1.

25 Number 2. Your Honor, the current Phase 2 discovery

1 deadline is October 4th. Even under the new 60-day proposal
2 by the downstream defendants, that leaves precious little time
3 for the plaintiffs to review the documents, address any
4 deficiencies, and perhaps, most importantly, schedule and
5 conduct depositions of the wholesaler/retailer pharmacy
6 30(b)(6) witnesses.

7 Number 3. There's no surprise or hardship, Your
8 Honor, to the downstream defendants here. They knew about
9 these draft requests since December 2020.

10 In the ensuing six months, the requests were sharply
11 narrowed to only a handful of noncustodial or
12 sufficient-to-show requests. We're talking about
13 sufficient-to-show work charts and inventory policy and lesser
14 redacted versions of agreements between the parties.

15 There's only so many parties here, there's only going
16 to be so many agreements. To say that they need 90 or now 60
17 days to start doing this de minimus work, in our view,
18 confirms what plaintiffs have feared all along, Your Honor.
19 That the six months between our serving the draft request in
20 December 2020 and now has essentially been lost time.

21 And, you know, I'm loathe to get into it, Your Honor,
22 but I'll touch on it just because Ms. Richer has brought it up
23 numerous times.

24 We did not address the 90 days they are requesting in
25 our CMC letter, Your Honor, because they never told us that.

1 They never said they were seeking 90 days. That's why our
2 letter was mute on that. In fact, the insert on the
3 wholesaler's position was also viewed on timing because we
4 similarly did not discuss 90 days with those defendants. And
5 although I was not at the last CMC, Your Honor, because I was
6 in a deposition, Your Honor addressed the merits of the
7 requests, as I read in the transcript, but did not reach the
8 issue of timing.

9 So we did not waive anything at the CMC in our
10 position -- in our view, Your Honor.

11 THE COURT: Right.

12 MR. STANOCH: That's all. Thank you, Your Honor.

13 THE COURT: Okay. All right. Anything else,
14 Ms. Richer?

15 MS. RICHER: Yes, Your Honor, very briefly. This is
16 Ms. Richer.

17 You know, it is true that the original order entered
18 by Judge Schneider last year did not provide for a 90-day
19 period, but I think even plaintiffs had forwarded Your Honor
20 the Court's order shortly after that when we fought about this
21 issue with plaintiffs then that extended our timeline and
22 directed the pharmacies to make a good faith effort to make
23 rolling productions starting 30 days out.

24 So that's simply what we've offered here.

25 We did not think that this would be something that

1 was controversial and had it been, we certainly would have
2 expected plaintiffs to say something at the last case
3 management conference where it had been briefed in our papers.

4 You know, regarding the inference that the pharmacies
5 have, you know, been sitting on this for six months, that the
6 original draft was sent to us in December 2020, the Court
7 has -- had plaintiffs note several times that the original
8 draft was sent us in December of 2020. Certainly the Court
9 knows the process that it's taken to get here.

10 These requests were not final until just before the
11 conference. They are final now. We have reached an agreement
12 on them. That took quite a bit of work. And we're working on
13 collecting the documents.

14 Our proposal for 60 days, with rolling production to
15 start 30 days out, is a good faith attempt to address
16 plaintiffs' concern while still making sure that we have the
17 time to track down some of the best-near things to track down
18 here now that we know exactly that we're looking for.

19 THE COURT: All right.

20 Anything else, Mr. Geoppinger?

21 MR. GEOPPINGER: Nothing from wholesalers, Your
22 Honor.

23 THE COURT: All right. I'll grant the request for 60
24 days with rolling production to commence within 30 days of
25 entry of the order. We'll send the order down for docketing

1 today, and so the clock should start running.

2 I'm sensitive to what you have to say, Mr. Stanoch,
3 but I also understand that these matters are enormously
4 complex and time-consuming, and I just want to get the matter
5 moving. That's why we have this call.

6 I'm sorry I didn't address it at the conference call
7 we had last week and that we had to conduct a separate call
8 today to resolve the matter. But I think this is an
9 appropriate compromise, that is, 60 versus 90 and 30, and
10 hopefully this production won't encounter any difficulty -- so
11 put it that way -- but we'll see.

12 And so we'll issue the order today, those requests
13 are approved, and the defendants can start on working on their
14 production.

15 Is there anything else to address today?

16 MR. STANOCH: David Stanoch, Your Honor.

17 No, Your Honor, not from plaintiffs' perspective.

18 And we understand and thank you for scheduling this call
19 promptly, Judge.

20 THE COURT: Okay. Yeah.

21 MS. RICHER: We echo the thanks, Your Honor.

22 THE COURT: Okay. Well, thank you all very much for
23 being available on short notice and we'll issue the order.

24 Thank you.

25 (11:13 a.m.)

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I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/S/ Karen Friedlander, CRR, RMR
Court Reporter/Transcriber

6-11-21
Date

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